IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5185 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USHABEN BADABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5185 of 1999

MS AMITA M SHAH for Petitioner No. 1

MS ARCHNA RAWAL ASSTT GOVT PLEADER for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

RULE SERVED for Respondent No. 3

MR JK PARMAR for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr.K.I.Patel with Ms.Amita M. Shah on behalf of the petitioner and learned advocate Mr.H.S.Munshaw for respondent Nos.2 & 3, learned AGP Ms.Archna Rawal on behalf of the respondent No.1. Learned advocate Mr.J.K.Parmar appears for respondent No.4.

In the present petition, Rule, came to be issued by this Court on date 26th July, 1999 making returnable on 5th August, 1999. Reply has been filed against the present petition by the respondent No.2.

By way of this petition, the petitioner has challenged the transfer order dated 30th June, 1999 [which is at Annexure-A of the compilation], whereby the petitioner has been transferred from Dagavadia village to Vasai Kanyashala, Taluka Vijapur. From the record, it transpires that this Court, at the time of issuing the Rule, has not granted any stay against transfer order dated 30th June, 1999. Learned advocate Mr.Patel states that the petitioner has already resumed at transferred place at the relevant time and she has been working at the transferred place for more than four years. However, learned advocate Mr.Patel submits that now the family circumstances of the petitioner are very hard and adverse as the petitioner has small baby of one year and her husband is farmer and resident of village Dagavadia. He also pointed out the distance between the transferred school may be not more than 25 kilometers but inconvenience is due to less transport facilities and the petitioner has to reach the school in piece meal transport and therefore, she has been suffering inconvenience and hardships. However, learned advocate Mr.Patel also submitted that by now long period of more than four years has passed after effecting transfer and there is no serious objection on the part of the petitioner while working at transferred place at Vasai and therefore, the case of the petitioner may be considered sympathetically for transferring back to Dagavadia. However, it is also contended that the other employees who were transferred along with the petitioner, has already been transferred back to Dagavadia but case of the petitioner has not been considered because of pendency of this petition.

Leaned advocate Mr.Munshaw for the respondent No.2 has submitted that the respondent will reconsider the case of the petitioner in the event the petitioner approaches again the concerned authority by way of detail representation pointing out the family circumstances and inconvenience and hardships being faced by the

petitioner, so also, the instances of the transfer back to original place in case of other co-employee. Thus, learned advocate Mr.Munshaw states that the respondent concerned will reconsider the case of the petitioner for transfer to her original place, sympathetically while keeping in mind all these aspects.

In view of above submissions made by the learned advocates for the parties, it is observed that it will be open for the petitioner to make a detail representation to the respondent No.2 pointing out the family circumstances and inconvenience and hardships being faced by the petitioner, so also, the instances of the transfer back to original place in case of other co-employee, within 15 days from today requesting the authority concerned to transfer the petitioner back to Dagavadia from Vasai Kanyashala. As and when the respondent No.2 will receive such representation from the petitioner, the respondent No.2 is directed to sympathetically consider the case of the petitioner for transfer to Dagavadia from Vasai keeping in mind the family circumstances of the petitioner as she is having small kid aged one year and her husband is farmer and resident of village Dagavadia, inconveniency due to less transport facilities and the other employees transferred with the petitioner at the relevant time, brought back to original place and the another aspect that sufficient period of four years passed by now and with the passage of time, whatever representation made against the petitioner, now have no much efficacy in light of the changed circumstances after this much period and after considering all these aspects, the respondent No.2 shall independently consider the case of the petitioner and to pass appropriate orders within two months from the date of receiving such representation from the petitioner.

In view of above observations and directions, present petition stands disposed of accordingly.

Rule discharged with no order as to costs.

Direct Service permitted.

Date : 7.8.2003 [H.K.Rathod, J.]

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